



Northern Alaska Environmental Center

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December 23, 2008

Randy Bates, Director
Division of Coastal and Ocean Management
Department of Natural Resources
PO Box 111030
Juneau, AK 99811-1030

RE: Re-evaluation of Alaska Coastal Management Program (ACMP)

Dear Mr. Bates,

By this letter, the Northern Alaska Environmental Center (NAEC) is submitting comments, and concerns regarding the proposed changes to the statutes (AS 46.39 and 46.40) and regulations (11 AAC 110, 112, and 114) for the current re-evaluation of the ACMP. In general, we agree with, incorporate and adopt by reference the comments filed by Trustees for Alaska and the Sitka Conservation Society regarding the proposed changes to the ACMP statutes and regulations. We also offer the following additional comments.

First, it appears that the Department of Natural Resources (DNR) current reform efforts are prompted largely to forestall legislative changes to the ACMP proposed last year. Different legislation (i.e., not from DNR) is warranted, because DNR has not been negotiating in good faith. DNR's stated purpose for the December Coastal Workshop was to inform ACMP stakeholders of DNR's reform intent, rather than work in a collaborative spirit to reform the ACMP, and it was further stated that even if a 99% consensus of the ACMP stakeholders existed regarding a specific issue, DNR would not guarantee the change would be made. Meaningful public participation apparently has been relegated to DNR duly noting public comments and then proceeding with a predetermined agenda.

Second, NAEC has great concerns regarding the marginalization of environmental protections and conservation in the ACMP. At every instance if environmental language can be removed or generalized, it has been in both the statutes and the regulations. The cumulative effect of this has been to make it impossible for DNR to fulfill its Public Trust, and Sustained Yield duties to the current citizens and future generations of Alaskans. Further, DNR will not be able to meaningfully address or achieve the policy objectives of the Coastal Zone Management Act of 1972. I quote comments submitted by the United States Environmental Protection Agency Region 10, submitted August 15, 2008, regarding the Re-evaluation of ACMP:

"It does not require a detailed evaluation to realize that the habitat standard was substantially diminished relative to the previous standard. Whereas the old standard (6 AAC 80.130(b)) required habitats to be managed so as to 'maintain or enhance the biological, physical and chemical characteristics of the habitat to support living resources,' the current standard has no overarching management requirement whatsoever. Instead, individual habitats currently 'must be managed to avoid, minimize, or mitigate significant adverse impacts' to a limited list of ecosystem processes."

“The EPA believes that enhancing the statewide standards will not only result in greater protection for the state’s coastal resources, but that it will also encourage greater program participation by the coastal districts, state agencies, and members of the public.”

“While the old standard made achieving consistency extremely difficult, the current standard makes protecting the ecological integrity of coastal habitats nearly impossible. This is because the functioning of a habitat such as a wetland is not solely dependent on maintaining water flow and natural drainage patterns. All of the coastal habitats are much more complex than the limited suite of processes supposedly protected under the current standard.”

“Higher standards that were more broadly applicable would allow the coastal districts, state agencies, and members of the public with a valid and valued role to perform during the consistency review. The ACMP would no longer be regarded as a perfunctory program and would be better able to achieve its mission of providing stewardship for Alaska’s rich and diverse coastal resources to ensure a healthy and vibrant Alaskan coast that efficiently sustains long-term economic and environmental productivity.”

Unfortunately, it is apparent that DNR must be reminded that in 1972 the Congress of the United States found and set forth in the Coastal Zone Management Act as amended through P.L. 104-150, The Coastal Zone Protection Act of 1996 that:

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, **have resulted in the loss** of living marine resources, wildlife, nutrient-rich areas, **permanent and adverse changes to ecological systems**, decreasing open space for public use, and shoreline erosion (emphasis added).

(d) The **habitat areas** of the coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, **are ecologically fragile and consequently extremely vulnerable to destruction by man’s alterations** (emphasis added).

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost.

(f) New and expanding demands for food, energy, minerals, defense needs, recreation, waste disposal, transportation, and industrial activities in the Great Lakes, territorial sea, exclusive economic zone, and Outer Continental Shelf are placing stress on these areas and are creating the need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters;

(g) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values.

(h) In light of competing demands and the **urgent need to protect and to give high priority to natural systems** in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate (emphasis added).

(i) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the

coastal zone by assisting the states, **in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone**, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance (emphasis added).

(k) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities must be improved.

(l) Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.

In addition to these findings Congress declared that it is the national policy (emphasis added) –

(1) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations;

(2) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of **management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values** as well as the needs for compatible economic development, which **programs should at least provide for –**

(A) the protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone,

Most distressing is that none of these findings or policies have been addressed in a meaningful way by the current changes offered by DNR. Nor has there been a meaningful attempt to ground any part of the program in a comprehensive understanding of ecosystems, where a management approach could account for and address the complex interrelationships among the ocean, land, air, and all living creatures, including humans, and consider the interactions among multiple activities that affect entire systems.

Nor has climate change been addressed in any of the statutes or regulations. Our planet is in "peril" and Alaska is at the forefront of climate change effects and when I asked for climate change to be addressed in the ACMP at a stakeholder meeting this past October the State was silent and the only response was from another stakeholder stating that climate change is a "can of worms we do not want to open." What am I supposed to do with silence and a can of worms?

Third, the continued marginalization of the habitat standards set forth in 11 AAC112.300 through the elimination and generalization of language within the standards. These standards are vital to ADF&G in its ability to protect and conserve Alaska's coastal habitats. Without these standards ADF&G statutory authority, as set forth in AS 16.05.841, AS 16.05.871 resides solely within the ordinary high water mark of rivers, streams, and lakes included in the Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes; special use areas, and the management of the free migration of fish in non-cataloged water bodies.

Additionally, the habitat standards are out of balance. With the removal of the "maintain and enhance standard" as originally set forth in 6 AAC 112.130(b) and the inclusion of the "avoid, minimize, or mitigate sequence" (11 AAC 112.900) and the "three part test" (11 AAC 112.300(d)) the habitat standards favor

use and set the avoidance of adverse affects to project cost above protection and conservation of habitats. Competing uses of a habitat have more protections in the language of the standards than do the biological, chemical, and physical characteristics of habitats that support fish, wildlife, and people (i.e. living natural resources).

Furthermore, critical definitions are not included or are severely limited (i.e. coastal uses and resources, coastal zone, impacts, and significant adverse impacts). These are not new terms or concepts and have been used and refined by federal and state agencies since the early 1970's. The ADF&G in collaboration with local agencies, and other vitally affected interests should be drafting the habitat standards, not DNR. This is a good example of why the ACMP should not be located in DNR and how the development bias of DNR adversely affects the implementation of the ACMP.

Specific Comments / Recommended Changes regarding DNR's proposed statutes (AS 46.39 and 46.40) and regulations (11 AAC 110, 112, and 114). New proposed material is shown in **bold and underlined**. Material proposed to be deleted is bracketed and shown with **~~bold strikethrough~~**.

1. The definition of "coastal use or resource" as set for in AS 46.40.210(3) is not clear as to the uses and resources included in the definition. The definition is also too limited in its scope. Please make the following changes to AS 46.40.210(3) "coastal use or resource" means a land or water use or natural resource of the coastal zone; "coastal use or resource" **includes the following uses: mining, subsistence, recreation, public access, fishing, [historic] [or] and the following resources: historic, archaeological [resources], geophysical [resources], mineral, subsistence, [and] biological, [or] physical, and ecological resources, found in the coastal zone on a regular or cyclical basis;**

2. Mining and mineral processing are significant uses of coastal resources and have long term impacts (e.g., water treatment of acid mine drainage of waste rock piles) often requiring mitigation of those impact for perpetuity. Therefore, please make the following changes to 11 AAC 112.260.

11 AAC 112.260 **Mining, and Mineral Processing**, and Sand and Gravel Extraction

(a) Mining and mineral processing in the coastal area must be regulated, designed, and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, statewide and national needs, and district programs.

3. AS 46.40.210(4) "coastal zone" means the coastal water including land within and under that water, and adjacent shoreland, including the water within and under that shoreland, **and uplands** within the boundaries approved by the former Alaska Coastal Policy Council and by the United States Secretary of Commerce under 16 U.S.C. 1451 - 1465 (Coastal Zone Management Act of 1972, as amended); "coastal zone" includes areas added as a result of any boundary changes approved by the department and by the United States Secretary of Commerce under 16 U.S.C. 1451 - 1465; "coastal zone" does not include:

(A) those lands excluded under 16 U.S.C. 1453(1); or

(B) areas deleted as a result of any boundary changes by the department in conformance with 16 U.S.C. 1451 - 1465;

4. Since the definition of the "coastal zone" means the coastal water including land within and under that water, ..." it is appropriate to include a new "Benthic Habitat" to the habitats contained in 11 AAC 112.300(a) along with the appropriate management guidelines to be set forth in 11 AAC 112.300(b).

5. Please reinstate the "Upland" habitat originally set forth in 6 AAC 112.130(a) into 11 AAC 112.300(a) with the appropriate management guidelines to be set forth in 11 AAC 112.300(b).

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6. Whenever subsistence is addressed in AS 46.40 and 11 AAC 110, 112, and 114 it should be clearly stated that both subsistence resources and uses need to be considered.

7. Please change the “avoid, minimize, or mitigate sequence” to read: avoid, minimize, ~~or~~ **and** mitigate.

Thank you for this opportunity to comment. If you have any questions, or wish to discuss any of the comments in this letter please feel free to contact me at (907)452-5021 or email zak@northern.org.

Sincerely,



Zachary Richter
Clean Water Program Director